IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.218 of 2007

Mr.Riyazuddin Jalaluddin Petitioner
Vs.
Mr. Jacob Falcon & anr. Respondents

Mr.P.S.Dani i/b Kunal Bhanage for petitioner.
Mr.Clive D'Souza for resp.no.1.

CORAM: B.H.MARLAPALLE,J.

March 22, 2007.

P.C.

1. Heard Mr.Dani with Mr.Bhanage, the learned counsel for the petitioner and Mr. Clive D'Souza, the learned counsel for the respondent no.1. Respondent no.2 is a formal party as being defendant no.1 in the main suit.

2. Rule. Mr.D'Souza waives service for the respondent no.1. Petition is taken up for final hearing forthwith by consent.

3. The present respondent no.1 has filed R.A.E. Suit No.195/558 of 1991 for ejectment of the tenant and particularly defendant no.1. The plaintiff claims that defendant no.2 is an unauthorised entrant and occupant of the suit premises which consist of two bedrooms, living room, kitchen and the toilet

bloc on the ground floor. On the basis of the rival pleadings, issues have been settled by the Small Causes Court on 2/3/2006 and Issue no.2 reads as under :

> "Whether the Plaintiff proves that the Defendant has illegally and unauthorisedly inducted his brother i.e. Defendant No.2 in the suit premises."

4. Interim Notice No.996 of 2006 was taken out by the defendant no.2 seeking the Court's permission to repair the roof of the suit premises which had collapsed and these repairs had to be undertaken consequent to the notice dated 8/8/2006 issued by the Assistant Commissioner, H/W Ward, Brihan Mumbai Mahanagarpalika. The defendant no.2 on receipt of the said notice has applied to the Corporation and obtained necessary permission for repairing the roof of the suit premises. The Interim Notice taken out by the defendant no.2 was opposed by the plaintiff by filing reply and it was contended that defendant no.2 not being a tenant and having been inducted unauthorisedly and illegally by defendant no.1, his application could not be entertained. The learned

Judge of the Small Causes Court by his order dated 28/11/2006 accepted the contentions of the plaintiff and rejected the Interim Notice i.e. Interim Notice No.996 of 2006 and hence this petition.

5. Section 23 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for short "the Act") provides for the tenanted premises to be kept in good and tenantable repair and in fact at the first instance it binds the landlord to keep the premises in good and tenantable repair alternatively if the landlord neglects to make any repairs which he is bound to make under sub-section (1) within a reasonable time after a notice of not less than 15 days is served upon him by post or in any other manner by tenant, such repairs could be carried out by a tenant or jointly by the tenants in which case the expenses incurred for such repairs could be recovered and adjusted from the rental compensation payable. When such is the statutory duty cast upon the landlord, it was totally erroneous for the learned Judge of the trial Court to reject the application by holding that the defendant no.2 is an unauthorised entrant and occupant in the suit premises. This observation by the learned Judge was

most uncalled for specially when Issue No.2 as reproduced hereinabove is required to be adjudicated by considering the oral and documentary evidence the parties may adduce during the trial of the suit and the said issue has been unwittingly adjudicated upon by the learned Judge by the impugned order. If the status of the petitioner is in dispute, some workable arrangement could have been ordered by the trial Court so as to ensure that the roof repairs were carried out in time and more so when the Corporation has already granted permission. The defendant has made out a sufficient case to hold that the roof repairs are imminently required and they are required to be carried out at the earliest possible. The repairs proposed would not only help the tenant but also the landlord who is occupying the premises on the first floor. Whether an illegal entrant, or a party who has any status, the fact remains that the defendant no.2 is presently occupying the premises and his alleged status of being an unauthorised entrant or occupant is pending for adjudication in the suit. At this stage it is a statutory requirement that the repairs be carried out and also from the safety point of members of the families of both the parties. Hence Interim Notice No.996 of

2006 filed in R.A.E. Suit No.195/558 of 1991 is hereby made absolute on the following conditions:

(a) the entire expenditure for the repairs will be borne by the petitioner and on completion of the repairs the amount shall be intimated to the Court below in writing.

(b) The repairs would be carried out without prejudice to the rights and contentions of the parties and the petitioner would file an undertaking before the trial Court within a period of two weeks from today that he shall not claim any equity or claim himself to be a tenant solely on the basis of the said repairs having been carried out by him. The adjustment of the amount of repairs shall be subject to the final outcome in the suit.

. The petition is disposed off accordingly.

(B.H